IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 915 OF 2003

Anna Yeshwant Ghorpade ... Appellant

V/s

1. Smt. Anjani w/o anandrao Patil ... Respondent

Shri D. D. Belosay for the appellant.

Shri R. V. More for Respondent.

CORAM: P.V. KAKADE, J.

DATED: 2ND NOV., 2004.

P.C.:

1. This is an appeal preferred against the judgment and order passed by the Addl.District Judge, Islampur, Dist. Sangli dated 20.9.2003 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Islampur, in Regular Civil Suit No. 42 of 1983 on 30.6.1994.

2. Heard learned counsel for the appellant as well as the respondent. Perused the record.

The plaintiff filed the suit against the defendant for injunction, declaration and partition of the suit

property. The plaintiff came with the case that the property mentioned in para 1 of the plaint was owned by the defendand and one Tukaram Santu Ghorpade. The defendant is in possession of 1/2 share on southern side and Tukaram was inm possession of 1/2 share on northern side. The husband of plaintiff purchased 1/2 share of Tukaram by registered sale deed dated 14.4.1977 for Rs.200/-. Since then the husband of the plaintiff was in possession of the suit property. It was further submitted that at the time of city survey inquiry, the husband of plaintiff was ill and subsequently, he died. During that period, taking undue advantage, the defendant entered his name for the whole suit property. Hence, against the entry, the plaintiff filed the appeal. It is submitted that the defendant was trying to make construction at 1/2 share of the plaintiff of suit property and, therefore, the plaintiff had sought for declaration as to her share in the suit property and also for injunction and consequential relief and in the alternative the plaintiff also prayed for possession of the suit property.

The defendant challenged the suit on the ground that the entire suit property belongs to him as it is his ancestral property and he is owner of it.

The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved title to the suit property and also her lawful possession thereon and, therefore, held to be entitled for declaration as well as injunction. Consequently, the suit was decreed with direction that the plaintiff had 1/2 share in the suit property and the defendant was required to give separate possession and one half share in the suit property which was occupied by him unlawfully.

The appeal was carried to the Addl. District Court. The lower Appellate Court Judge, after hearing both sides confirmed the decision of the lower Court and dismissed the appeal. Hence the present appeal.

4. At the outset, it may be noted that this appeal against the concurrent findings of facts is filed and in doing so, the so-called question of law is sought to be raised to the effect that both the Courts below failed to appreciate that being an ancestral property of Santoo Ghorpade, the said Tukaram was not entitled to dispose of any portion of the ancestral property without joining other heirs and beneficiaries which he has not done.

The learned counsel for the appellant took me through the judgments of both Courts below in order to support this question, however, in my considered view, this question cannot be the question of law at all, leave aside, any substantial question of law. What is done by Ghorpade is to dispose of his share in the ancestral property for which he cannot be said to have committed any illegality. In view of this position, I do not see why the appeal should be entertained, which involves pure questions of fact which are seen to be properly and correctly adjudicated by both Court below.

The ratio laid down in the case of **Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar, reported 1999 SCC 2213,** clearly stipulates that the concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of the powers under Sec.100 of the C.P.C. Where the first appellate Court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in the second appeal. In the present case before us, both the Courts below are seen to have exercised properly in appreciating the available evidence on record in order to come to the conclusion that the plaintiff was rightful owner of the

property and, therefore, decree for partition and possession came to be passed which need not be disturbed by this Court at all.

In the result, the appeal stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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